

CONFIDENTIAL

COPY

THE BRITISH BROADCASTING CORPORATION

Head Office: Broadcasting House, London, W. 1.  
CAVERSHAM PARK, READING, BERKS.

Reference:  
07/MS/HAF

Colonel L. K. White  
F.B.I.S.  
2430 E Street, N. W.  
Washington 25, D. C.

3rd February 1949

Dear Red,

I am sorry that we have not previously submitted our views on the copyright and libel position but I have only today received the views of our solicitors on the matter. They express an opinion as follows.

1. The British Broadcasting Corporation does not claim immunity from suit in the United States as it is a private corporation established by Royal Charter and it is not an arm of the British Government. The position is not affected by the registration of the Corporation's North American Office under the Foreign Agents Registration Act as the office was registered "as an agent of the B.B.C. London" and not as an agent of the British Government.
2. I understand that C.I.A. officials in England go through the material received by the Corporation and select the items which they consider would interest the C.I.A. in the United States. I think that the Corporation might be liable to an action for libel or infringement of copyright in England arising out of the publication of the material to the C.I.A. officials here but I cannot see that the Corporation would be liable to an action in the United States as the transmission of the selected material to the United States and its subsequent publication there is entirely handled by C.I.A. officials and not by the Corporation.
3. I note that the Legal Adviser of the Department of State has expressed the view that sovereign immunity could be claimed to bar a suit in England against F.B.I.B. or its employees who in the course of their duties do some act which would expose a member of the public to an action for libel or infringement of copyright. If there is any doubt as to the status of a foreign government or its employees it is the practice of the English Courts to seek information from the Secretary of State for the appropriate department (usually the Foreign Office) and a statement by the Secretary of State is accepted as conclusive on the question of status.

CONFIDENTIAL

COPY

(67) 100-100000

COPY

4. If the Secretary of State certifies that the F.B.I.B. employee is entitled to plead sovereign immunity, I think that the protection would extend to all acts done by him whether within or outside the scope of his official duties. If, however, the employee committed an action which was quite irrelevant or foreign to the performance of his official duties the United States Government would, no doubt, consider whether it was appropriate that its employee should claim the protection of sovereign immunity or whether the privilege should be waived so that the matter in question could be decided by the English Court.
5. The position in England as regards copyright protection for items of news is that decided cases under the Copyright Act 1911 have established that there is no copyright in the facts of news as such but that there is copyright in the literary form in which those facts are expressed. English jurisprudence does not, however, recognise the doctrine of unfair competition which can be invoked in the United States.

From this opinion I assume that the Corporation would not be liable to suit in America as the technical act of publication is completed in Great Britain when we make our material available to your editors. Any publication here thus automatically comes outside the jurisdiction of the American Courts.

As far as your liability here is concerned, it would seem that everything depends on whether the Secretary of State for Foreign Affairs would, in the event of any action, certify that F.B.I.S. employees enjoyed sovereign immunity. If your Legal Counsel supports this view, I suggest that either you through your Embassy, or we on your behalf, should forthwith approach the Foreign Office to ascertain what their attitude would be in these circumstances. Will you send me a signal letting me know whether you propose to take this matter up with the Foreign Office through your diplomatic channels or whether you would like me to do it on your behalf.

For your information we are now taking positive editorial steps to eliminate from our published documents all material which in our opinion might lead to an action for libel against us. We have incidentally noticed since putting these arrangements into force that on at least one occasion your own daily report published here has included items which we have eliminated in our documents owing to risk of action. We have also noticed that Reuters news agency and certain British papers have refrained from quoting various Iron Curtain broadcasts, obviously for the same reason.

Yours sincerely,

/s/ Malcolm

COPY

FROM WASHINGTON

TO LONDON

FOR FROST

STAT

REFERENCE NEXT TO LAST PARAGRAPH YOUR 3 FEBRUARY 1949 LETTER, REGRET DELAY  
IN ANSWERING BUT HAVE JUST BEEN ADVISED BY LEGAL COUNSEL THAT IT IS  
CONSIDERED ADVISABLE TO APPROACH MATTER THROUGH OUR EMBASSY. HOWEVER  
WE WOULD BE MOST GRATEFUL FOR YOUR SIMULTANEOUS SUPPORT AND I WILL KEEP  
YOU ADVISED.

REFERENCE LAST PARAGRAPH SAME LETTER HAVE INSTRUCTED KAYE COORDINATE WITH  
YOU AND CONFORM TO YOUR PRACTICES IN ELIMINATION OF QUESTIONABLE ITEMS.

WHITE

3 MARCH 1949

COPY